

## Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGRE-00 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 EPG-02 COME-00

DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01

TRSE-00 H-01 INR-07 INT-05 JUSE-00 L-03 NSAE-00

NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01

SP-02 SS-15 USIA-06 AF-10 ARA-10 EA-07 EUR-12

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P 231931Z JUN 77

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC PRIORITY 4171

C O N F I D E N T I A L SECTION 1 OF 3 USUN 2009

FROM:LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJ: LOS: SITREP FOR JUNE 21

1. GENERAL. THE US DEL HAD BEEN TOLD BY CONFERENCE PRESIDENT AMERASINGHE THAT HE PLANS TO BEGIN DISCUSSIONS WITH COMMITTEE CHAIRMEN JUN 24 WITH A VIEW TO PRODUCING A COMPOSITE TEXT BY THE END OF THE 6TH WEEK OF THE CONFERENCE (JULY 1). AMERASINGHE DOES NOT INTEND TO INCORPORATE HIS OWN IDEAS INTO THE INITIAL COMPOSITE TEXTS, BUT RATHER CALL FOR INPUT BY THE COMMITTEE CHAIRMEN. AFTER CIRCULATION OF THE COMPOSITE TEXTS, THE REMAINING TWO WEEKS OF THE CONFERENCE WOULD BE SPENT IN PLENARY AND WORKING GROUP DISCUSSION OF THE TEXTS, WITH AMERASINGHE TAKING A LEADING ROLE. PINTO (SRI LANKA) WILL REPORTEDLY BE AMERASINGHE'S PRINCIPAL DRAFTER. AMERASINGHE HOPES TO PRODUCE A REVISED COMPOSITE TEXT BEFORE THE END OF THE SESSION. THIS TEXT WOULD HAVE THE STATUS OF A DRAFT TREATY, SIMILAR TO THE 1958 DRAFT LOS CONVENTION SUBMITTED BY THE INTERNATIONAL LAW  
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COMMISSION. IN CONTRAST, THE RSNT HAS NOT RECEIVED SUCH RECOGNITION SINCE IT IS A COMPILATION OF COMMITTEE REPORTS.

2. AMERASINGHE THUS APPEARS TO BE PLACING HIS PRESTIGE ON THE LINE BY SEEKING TO ASSOCIATE HIMSELF PERSONALLY WITH A DRAFT TREATY AND BY INVOLVING HIMSELF DIRECTLY IN THE

NEGOTIATING PROCES. HIS IS A HIGH RISK STRATEGY, WHOSE SUCCESS WILL DEPEND UPON KEY DELEGATIONS SHARING A COMMON PERCEPTION THAT THE LOS CONFERENCE HAS REACHED A CRUNCH STAGE AND A WILLINGNESS TO FIND MUTUALLY ACCEPTABLE ACCOMMODATIONS. SHOULD AMERASINGHE FAIL TO PURSUADE THE PRINCIPAL ACTORS OF THE URGENCY TO REACH BASIC AGREEMENT IN THE NEXT THREE WEEKS, THE PROSPECTS FOR A TREATY IN THE FORESEEABLE FUTURE WILL DIM AND AMERASINGHE'S OWN USEFULNESS TO THE CONFERENCE WILL BE IN DOUBT.

3. COMMITTEE I. PRIVILEGES AND IMMUNITIES FOR THE ENTERPRISE AGAIN HIGHLIGHTED COMMITTEE I DISCUSSION. PERU (DESOTO) SAID THAT INDUSTRIAL COUNTRY OPPOSITION TO GRANTING THE ENTERPRISE SPECIAL TAX AND LEGAL STATUS WAS SYMPTOMATIC OF THEIR GENERAL UNWILLINGNESS TO SEE THE ENTERPRISE BECOME VIABLE AND ATTAIN PREFERRED STATUS IN THE SEABED. FOR EXAMPLE, HE NOTED THAT EVENSEN'S LATEST FORMULATION OF ARTICLE 22 (SYSTEM OF EXPLOITATION) PLACES THE ENTERPRISE IN CO-EQUAL STATUS WITH STATE ENTITIES. FURTHERMORE, ARTICLE 11 (TECHNOLOGY TRANSFER) HAS "NO TEETH", SINCE IT DOES NOT IMPOSE AN OBLIGATION ON INDUSTRIAL COUNTRIES. DESOTO ALSO LINKED INDUSTRIAL COUNTRY POSITIONS ON THE ENTERPRISE WITH THEIR TENDENCY TO REFUSE CONFIDENTIAL

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TO GIVE THE AUTHORITY FLEXIBILITY IN SUCH FUNCTIONS AS THE GRANTING OF CONTRACTS.

4. THE UK (WOOD) OBSERVED THAT HERE WAS ALREADY AGREEMENT THAT THE ENTERPRISE WOULD RECEIVE SIGNIFICANT SPECIAL CONSIDERATION VIS A VIS STATE ENTITIES. THE BANKING SYSTEM AND SPECIAL FINANCING PROVISIONS FOR THE ENTERPRISE SUGGEST A GENUINE EFFORT TO MAKE THAT ORGANIZATION A MAJOR OPERATOR IN THE SEABED, PERHAPS THE MAJOR OPERATOR. NEVERTHELESS, WHILE DISMISSING DESOTO'S GLOOMY PROGNOSIS FOR THE ENTERPRISE, WOOD CAUTIONED THAT THE CONFERENCE SHOULD ENSURE THAT SPECIAL PROVISIONS GRANTED TO THE ENTERPRISE ARE NECESSARY AND WILL NOT CAUSE MARKET DISTORTIONS.

5. COMMITTEE I RETURNED TO ARTICLE 27 (COUNCIL) AND HEARD CZECHOSLOVAKIA, SPEAKING FOR THE LL/GDS, PROPOSE THAT THEY RECEIVE ONE-THIRD OF THE COUNCIL SEATS, PROPORTIONAL TO THEIR REPRESENTATION IN THE TOTAL NUMBER OF CONFERENCE PARTICIPANTS. SWITZERLAND ALSO DEFENDED THIS PROPOSAL. THE USSR SUPPORT-

ED THE CZECH PROPOSAL SINCE IT WOULD PROBABLY RESULT  
IN LOADING THE COUNCIL WITH SOCIALIST STATES. THE  
UK (WOOD) DELIVERED THE STRONGEST OBJECTION, DENYING  
THAT THE PROPOSAL HAD ANY BASIS IN EQUITY. EGYPT  
ALSO QUESTIONED WHETHER THE LL/GDS, WHICH INCLUDE  
A NUMBER OF HIGHLY DEVELOPED COUNTRIES, DESERVED  
RECOGNITION AS A SPECIAL INTEREST GROUP.

6. COMMITTEE III. SCIENTIFIC RESEARCH. YANKOV HELD  
A MEETING WITH ABOUT 25 HEADS OF DELEGATION TO  
DISCUSS ARTICLE 60 ON THE REGIME FOR SCIENTIFIC RE-  
SEARCH. IN AN ATTEMPT TO MOVE THE NEGOTIATIONS IN  
THE DIRECTION OF A CONSENT REGIME AS DESIRED BY  
THE USSR AND MANY OF THE GROUP OF 77, HE HAD IN-  
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TENDED TO USE HIS TEST PROPOSAL FROM THE LAST  
SESSION AS THE BASIS FOR NEGOTIATION. HOWEVER,

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P 231931Z JUN 77

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TO SECSTATE WASHDC PRIORITY 4172

C O N F I D E N T I A L SECTION 2 OF 3 USUN 2009

FROM: LOS DEL

AMBASSADOR RICHARDSON, ACCOMPANIED BY THE HEADS  
OF DEL OF JAPAN AND THE UK, MET PRIVATELY WITH

YANKOV AND STRONGLY ARGUED THAT THE TEST PROPOSAL WAS NOT AN ACCEPTABLE BASIS FOR NEGOTIATION. RICHARDSON INDICATED THAT ANY PROPOSAL WHICH MOVED CLOSER TO A TOTAL CONSENT REGIME WAS UNACCEPTABLE AND WOULD NOT RESULT IN PROGRESS SINCE IT WOULD IGNORE AN IMPORTANT INTEREST GROUP, THE RESEARCHING STATES. YANKOV CONSEQUENTLY REOPENED THE QUESTION OF PROCEDURE, AND AFTER A TWO-HOUR DISCUSSION, CLOSED THE MEETING WITHOUT DESIGNATING ANY PROPOSAL AS THE BASIS FOR NEGOTIATION.

7. THE DEBATE WAS SIMILAR TO THE DEBATE IN COMMITTEE WITH THE USSR AND MANY DEVELOPING COASTAL STATES SUPPORTING A STRONG CONSENT REGIME WHILE THE US, FRG, NETHERLANDS AND A FEW OTHERS ARGUED FOR CHANGES IN THE RSNT AWAY FROM THE CONSENT REGIME. YANKOV SUGGESTED THAT INTERESTED DELEGATIONS MEET TO  
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ATTEMPT TO RESOLVE DIFFERENCES BUT GAVE NO INDICATIONS THAT HE WOULD UNDERTAKE FURTHER EFFORTS. CONSEQUENTLY, IT SEEMS OBVIOUS TO EVERYONE THAT THE SCIENTIFIC RESEARCH QUESTION IS AT STALEMATE. WITH YANKOV HAVING FAILED TO PRODUCE SERIOUS NEGOTIATIONS, IT NOW SEEMS MORE LIKELY THAT AN ALTERNATIVE FORUM CAN BE DEVELOPED TO DEAL WITH THE ISSUE.

8. BEGIN UNDERLINE PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT. END UNDERLINE IN THE PRIVATE NEGOTIATING GROUP THE US, SUPPORTED BY CANADA AND NEW ZEALAND, SUGGESTED THE GROUP IMMEDIATELY BEGIN DISCUSSION OF STANDARD SETTING IN THE TERRITORIAL SEA. IN RESPONSE, CHAIRMAN VALLARTA (MEXICO) AGREED, IN THE THREE-DAYS ABSENCE OF AMBASSADOR YANKOV, TO SPEAK TO PRESIDENT AMERASINGHE REGARDING COORDINATION BETWEEN COMMITTEE II AND III ON THIS ISSUE.

9. REVERTING TO ARTICLE 30 (COASTAL STATE ENFORCEMENT) THE USSR ASKED WHETHER THE GROUP COULD AGREE THAT THE TERM "DISCHARGE" WAS TO BE DEFINED IN THE SAME MANNER AS THE 1973 CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS. DESPITE ATTEMPTS BY VALLARTA TO LIMIT DISCUSSION TO THE SOVIET QUESTION, THE REST OF THE MEETING WAS SPENT REHASHING THE ISSUE OF WHETHER ARTICLE 30 SHOULD BE AMENDED TO LIMIT COASTAL STATE ENFORCEMENT POWERS TO DISCHARGE VIOLATIONS.

10. THE INFORMAL WORKING GROUP CONTINUED DEBATE ON ARTICLE 30. THE DEBATE ON PROPOSED AMENDMENTS TO

PARA 6 (COASTAL STATE ENFORCEMENT IN THE ECONOMIC ZONE) WAS NOTEWORTHY IN THAT ONLY ONE SPEAKER  
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(GDR) TOOK THE FLOOR, TO OBSERVE THAT EVEN THE SLIGHTEST ALTERATION OF THIS PARAGRAPH COULD UPSET THE COMPROMISE EMBODIED IN THE PRESENT ARTICLE.

11. DEBATE ON PARA 7 (SPECIAL PROVISION FOR AVOIDING ARREST OF VESSELS UNDER PARA 6) REFLECTED CONSENSUS THAT PRESENT TEXT WAS CONFUSING. WHILE JAPAN, FRANCE, IRELAND, PORTUGAL PREFERRED DELETION, USSR, ISRAEL, AND CUBA THOUGHT TEXT SHOULD BE AMENDED TO MAKE CLEAR THAT PROCEDURES REFERRED TO PAYMENT OF PENALTIES AND NOT CIVIL JUDGMENTS FOR DAMAGES. AFTER CHAIRMAN (VALLARTA) INTRODUCED A TEXT ARISING FROM HIS OWN INFORMAL CONSULTATIONS. INDIA TOOK FLOOR TO OBSERVE THAT IT WAS NECESSARY TO VIEW THE ENTIRE ARTICLE BEFORE AGREEING TO CONCESSIONS SUCH AS THAT EMBODIED IN THE CONCEPT OF PARA 7. WHILE SPAIN SUPPORTED DELETION OF ANY PROVISION, IT AGREED NEW TEXT WAS AN IMPROVEMENT, AS DID ISRAEL. NEW TEXT PROVIDES FOR FUTURE DEVELOPMENT OF PROCEDURES TO DECREASE NECESSITY OF ARREST IN FAVOR OF STATE ASSUMPTION OF LIABILITY.

12. COMMITTEE II. AN INFORMAL MEETING OF COMMITTEE II HEARD REPORTS FROM THE CHAIRMEN OF THE THREE RESPECTIVE CONSULTATIVE GROUPS. THE CHAIRMAN (TURKMAN) OF CONSULTATIVE GROUP I (LEGAL STATUS OF EEZ) STATED THAT A SERIOUS DIVERGENCE OF VIEWS PERSISTED ON THE LEGAL STATUS OF THE EEZ, (ARTICLES 44, 46 AND 75). THE DIVISION OVER THE LATTER ARTICLE HE CHARACTERIZED AS "INSUPERABLE". PERU, TANZANIA, URUGUAY, ECUADOR, EL SALVAROD AND THE PRC EXPRESSED STRONG OPPOSITION TO ANY CONCEPTION OF AN EEZ INCORPORATING HIGH SEAS STATUS, REITERATING THEIR POSITION THAT THE EEZ IS NECESSARILY A "ONE OF NATIONAL JURISDICTION". THE PRC SPOKE OF A DRIVE BY THE SUPERPOWERS TOWARD "MARITIME HEGEMONISM"  
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AND DIRECTLY CHARACTERIZED THE SOVIET PROPOSALS AS "PHONY."

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P 231931Z JUN 77

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TO SECSTATE WASHDC PRIORITY 4173

C O N F I D E N T I A L SECTION 3 OF 3 USUN 2009

FROM: LOS DEL

13. REBUTTALS TO THE TERRITORIALITS POSITION WAS THE  
OBJECT OF INTERVENTIONS BY DENMARK, FRG, THE  
SOVIET UNION, BULGARIA, POLAND AND HUNGARY, ALL  
OF WHOM SPOKE IN FAVOR OF THE HIGH SEAS STATUS OF  
THE EEZ. THE SOVIET UNION STATED THAT LATHOUGH IT  
SUPPORTED THE AUSTRALIAN PROPOSALS ON ARTICLES 44  
AND 75, IT COULD CONSIDER ALTERNATIVE FORMULATIONS  
OF EQUAL MERIT. DENMARK, SUPPORTED BY CANADA, PRO-  
POSED DELETION OF ALL REFERENCE IN ARTICLE 46 TO  
THE FREEDOM OF LAYING PIPELINES. JAMAICA STATED  
ITS PREFERENCE FOR A TEXT WHICH DID NOT DEFINE THE  
EEZ AT ALL THE VICE ITS SUPPORT FOR THE BEGIN UNDERLINE  
SUI GENERIS END UNDERLINE CONCEPT.

14. THE CHAIRMAN (NJENGA) OF CONSULTATIVE GROUP II,  
CONTINENTAL SHELF/REVENUE SHARING, WAS SURPRISING-  
LY OPTIMISTIC ABOUT THE PROGRESS THUS FAR MADE IN  
THAT WORKING GROUP. HIS EXPRESSIONS OF OPTIMISM  
WERE SOMEWHAT UNDERCUT BY THE DIALOGUE WHICH  
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FOLLOWED HIS PRESENTATION. SINGAPORE, CONFIRMED

IN ITS VIEWS BY OTHERS OF THE LL/GDS GROUP, STATED THAT INTRANSIGENCE OF THE GROUP OF 21 (COASTAL STATES) TOWARD THE DEMANDS OF THE LL/GDS GROUP HAD RESULTED IN A "STALEMATE" IN THEIR NEGOTIATIONS. WHAT FOLLOWED WAS A LENGTHY DEBATE ON A PROPOSAL MADE BY COLOMBIA THAT INFORMATION BE PROVIDED COMMITTEE II ON THE DELIMITATION OF THE SHELF ACCORDING TO THE THREE PROPOSED DELIMITATION CRITERIA OF 200-MILE DISTANCE CRITERIA, THE 500 METER DEPTH CRITERION, AND THE IRISH FORMULA. NO DECISION WAS MADE, ALTHOUGH WE SUSPECT THAT THIS REQUEST WILL NOT BE HONORED. THE REPORT OF THE CHAIRMAN (JACHER) OF CONSULTATIVE GROUP III (DELIMITATION) WAS SIMPLY A REITERATION OF AMENDMENTS TO ARTICLES 14, 62, AND 71 REPORTED IN PREVIOUS TELS.

15. CONSULTATIVE GROUP II (CONTINENTAL SHELF/REVENUE SHARING) MET IN THE AFTERNOON. AUSTRIA REPORTED THAT NO REPEAT NO CONSENSUS HAD BEEN REACHED IN WORKING GROUP 6. CANADA TABLED ITS PROPOSAL ON ARTICLE 70. JAPAN VOICED, IN A LENGTHY TECHNICAL PRESENTATION, ITS OBJECTIONS TO THE GEOMORPHOLOGICAL ASSUMPTIONS OF THE IRISH FORMULA, AND PROPOSED THAT DELIMITATION OF THE SHELF BE BASED UPON THE LINE OF GEOLOGICAL DIVISION BETWEEN THE OCEANIC AND CONTINENTAL CRUSTS. THE JAPANESE DEL ALSO STATED THAT HIS DELEGATION WAS PREPARED TO NEGOTIATE ON A DISTANCE CRITERIA AND/OR TO EXAMINE OTHER APPROPRIATE METHODS E.G. 2500 METER DEPTH.  
MCHENRY

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